



United States Department of the Interior

BUREAU OF OCEAN ENERGY MANAGEMENT
WASHINGTON, DC 20240-0001

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Sterling, VA 20166

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July 12, 2019

Via Postal and Electronic Mail: 47701-73517481@requests.muckrock.com

Jesse Coleman
MuckRock News
Dept MR 47701
411A Highland Avenue
Somerville, MA 02144-2516

RE: Freedom of Information Act (FOIA) Request No. BOEM-2018-00067

Dear Mr. Coleman:

This letter is in reference to your FOIA request dated January 16, 2018 and received by the Bureau of Ocean Energy Management (BOEM) and received on the same date. Your request is assigned request number BOEM-2018-00067. Please cite this number in any future communications with our office regarding your request.

Your Request

You requested:

All communications, including emails and attachments, between BOEM staff and Vincent DeVito, [Counselor to the Secretary for Energy Policy at the Department of the Interior].

Additionally, you have a previous FOIA request dated October 12, 2017, and assigned request number BOEM-2017-00201, where you requested similar information: communications, with specific BOEM staff and Vincent DeVito, Counselor to the Secretary for Energy Policy.

By telephone conversation on February 16, 2018, you narrowed the scope of your request as follows:

- The time frame is March 1, 2017 to the date of the search;
- Only include email correspondence sent from the account of Vincent DeVito (Vincent_DeVito@ios.doi.gov);
- Exclude records described in section 5.b of the Acknowledgement letter;
- Include the first page of reports and exclude the remaining pages.

By telephone conversation on February 21, 2018, you agreed to further narrow the scope of your request to limit the search to the following BOEM personnel:

- Acting Director (Deputy Director)
- Chief of Staff
- Senior Advisor to the Director

The Bureau's Final Response to Your Request

We are writing to you today to provide you with the Bureau's final response to your FOIA request consisting of 343 pages being released to you as follows:

- 162 pages are withheld in part or in full
- 3 pages being referred;
- The remaining 178 pages are being released in their entirety.

Information Withheld Pursuant to Exemption 4

We are withholding 3 pages in part under FOIA Exemption 4. Exemption 4 protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential."

The withheld information is commercial or financial information. The company that supplied this information (the submitter) is considered a person, because the term "person," under the FOIA, includes a wide range of entities including corporations. We are withholding 3 pages in part under Exemption 4 because they are protected under the following rationale:

The information in question was voluntarily submitted and is confidential.

We have determined that the submitter voluntarily submitted this information to the government, as the BOEM did not require the information at issue to be submitted. Information that was voluntarily submitted is considered confidential if it is of a kind that would customarily not be released to the public by the person from whom it was obtained. Because the submitter does not customarily release this information to the public and it is not available to the public from other sources, the information is confidential for the purposes of Exemption 4 and we have withheld it.

Information Withheld Pursuant to Exemption 5

Exemption 5 allows an agency to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency." 5 U.S.C. § 552(b)(5). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges. We are withholding 71 pages in part and 11 pages in full under Exemption 5 because they qualify to be withheld under the following privilege:

Deliberative Process Privilege

The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters by ensuring agencies are not forced to operate in a fish bowl. A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) assure that subordinates will feel free to provide the decisionmaker with their uninhibited opinions and recommendations; (2) protect against premature disclosure of proposed policies; and (3) protect against confusing the issues and misleading the public.

Attorney-Client Privilege

The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice and is not limited to the context of litigation. Moreover, although it fundamentally applies to confidential facts divulged by a client to his/her attorney, this privilege also encompasses any opinions given by an attorney to his/her client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect confidential client-supplied information.

The information that has been withheld under the attorney-client privilege of Exemption 5 constitutes confidential communications between agency attorneys and agency clients related to legal matters for which the client sought professional legal assistance and services. It also encompasses opinions given by attorneys to their clients based on client-supplied facts. Additionally, the Bureau employees who communicated with the attorneys regarding this information were clients of the attorneys at the time the information was generated and the attorneys were acting in their capacities as lawyers at the time they communicated legal advice. Finally, the Bureau has held this information confidential and has not waived the attorney-client privilege.

Information Withheld Pursuant to Exemption 6

Exemption 6 allows an agency to withhold “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). We are withholding 85 pages in part under Exemption 6.

The phrase “similar files” covers any agency records containing information about a particular individual that can be identified as applying to that individual. To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information.

Under the FOIA, the only relevant public interest to consider under the exemption is the extent to which the information sought would shed light on an agency’s performance of its statutory duties or otherwise let citizens ‘know what their government is up to. The burden is on the requester to establish that disclosure would serve the public interest. When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to

personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public.

The information that has been withheld under Exemption 6 consists of personal information, such as phone numbers and email addresses, and we have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. Additionally, we have determined that the disclosure of this information would shed little or no light on the performance of the agency's statutory duties. Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute a clearly unwarranted invasion of the privacy of this individual and we are withholding it under Exemption 6.

I, Debra Moore, Senior Government Information Specialist, am responsible for this partial denial. Mr. Gurney Small, Attorney Advisor, Office of the Solicitor was consulted. We reasonably foresee that disclosure would harm and interest or individuals protected by one or more of the nine exemptions to the FOIA's general rule of disclosure.

Referral of Records to Another Agency

We have located three pages of records that substantially concern the Department of Commerce (DOC). DOC will issue a response directly to you. You do not have to contact DOC at this time, but should you need to do so in the future, you may do so at:

Ms. Bobbie Parsons
Immediate Office of the Secretary Freedom of Information Officer

Department of Commerce
Office of Privacy and Open Government
14th Street and Constitution Avenue, NW
Mail Stop 52010
Washington, DC 20230

Phone: (202) 482-3257
Fax: (202) 482-0827
Email: bparsons@doc.gov

Appeal Rights and Mediation Services

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal no later than 90 workdays from the date of this letter. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION

APPEAL." You must include an explanation of why you believe the BOEM's response is in error. You must also include with your appeal copies of all correspondence between you and BOEM concerning your FOIA request, including your original FOIA request and BOEM's response. Failure to include with your appeal all correspondence between you and BOEM will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/PA Appeals Officer needs additional information or clarification of your appeal. Submit appeals to:

Department of the Interior
Office of the Solicitor
1849 C Street, NW
MS-6556 MIB
Washington, DC 20240

Attn: FOIA/Privacy Act Appeals Office

Telephone: (202) 208-5339
Fax: (202) 208-6677
Email: FOIA.Appeals@sol.doi.gov

Also, the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001

Email: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: (202) 741-5770
Fax: (202) 741-5769
Toll-free: 1-877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer.

You may also seek dispute resolution services from Natasha Alcantara, BOEM's FOIA Officer/Public Liaison, at (703) 787-1818 or via email at boemfoia@boem.gov.

Conclusion

This concludes BOEM's response to your request. If you have any questions concerning this response, you may contact us by email at boemfoia@boem.gov; by telephone at (703) 787-1640; or write to: FOIA Office; Bureau of Ocean Energy Management; Mail Stop: VAM-BOEM DIR; 45600 Woodland Road; Sterling, VA 20166.

Sincerely,



X_____

Debra Moore

Senior Government Information Specialist
Bureau of Ocean Energy Management

Attachment: As stated